IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)
FRIDAY, THE EIGHTEENTH DAY OF JUNE
TWO THOUSAND AND FOUR
PRESENT
THE HON'BLE MR JUSTICE G. BIKSHAPATHY
and
THE HON'BLE MR JUSTICE B.SESHASAYANA REDDY

WRIT PETITION NO : 9835 of 2004

Between:
The Commissioner Municipal Corporation of Hyderabad, Tank Bund, Hyd.,

..... PETITIONER

AND

1 Mohd.Shafiuddin S/o. Abdul Mohd.Mohiuddin
Slum Development Officer, Urban Community Development M.C.H.Circle II, Sarder Mahel, Charminar, Hyderabad.
2 The Government of Andhra Pradesh, rep by its Secretary Municipal Administration and Urban Development
(F1) Department Secretariat Buildings, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ of Certiorari or any other appropriate writ, order or direction calling for the records pertaining to the order Dt.25.9.2003 passed in O.a.No.2197 of 2003 on the file of the Hon'ble Andhra Pradesh Administrative Tribunal, Hyderabad and set aside the same and pass.

For the Petitioner :MR.A.V.SESHA SAI, Advocate

For the Respondent s: GP FOR MUNCIPAL ADMN. & URBAN DEV.

The Court Made the Following :

THE HON'BLE MR. JUSTICE G. BIKSHAPATHY
AND
THE HON'BLE MR. JUSTICE B.SESHASAYANA REDDY

WRIT PETITION NO. 9835 OF 2004

COMMON ORAL ORDER : (per G.B., J.,)

This Writ Petition is filed assailing the order of the A.P. Administrative Tribunal (for brevity 'Tribunal'), passed in O.A.No.2197 of 2003, dated 5.9.2003.

2. The 2nd respondent, who was working as Slum Development Officer in Urban Community Development, M.C.H.,Secunderabad Division, was proceeded in a departmental enquiry. Ultimately, he was removed from service by an order dated 28-03-2001. The said removal order came to be challenged by the 2nd respondent in O.A.No.2623 of 2001. The learned Tribunal disposed of the said O.A., directing the petitioner to file appeal before the Government. Accordingly, he filed an appeal before the Government and the Government by its order dated 27-12-2001 in G.O.Rt.No.1214 M.A., rejected the appeal filed by the 2nd respondent. Against which he filed

O.A.No.7 of 2002. The Tribunal after considering the matter, passed an order dated 23-08-2001, quashing the order of removal as well as the order passed by the Government in G.O.Rt.No.1214 M.A., dated 27.12.2001 and directed reinstatement of the petitioner. However, the Tribunal left it open to the Municipality to proceed departmentally, if it so chooses. Against the said order passed by the Tribunal, the Municipality carried the matter before this Court in W.P.No.267 of 2003 and the same was dismissed on 9.01.2003. Thereafter the petitioner was reinstated by the 2nd respondent and a charge memo was issued to him. While so, the 2nd respondent made an application for payment of full wages for the period of suspension and thereafter he approached the Tribunal by filing O.A.NO.2197 of 2003. The learned Tribunal after considering the matter held that the 2nd respondent is entitled for full wages. Against the said order the present Writ Petition is filed.

3. The learned standing counsel for the Municipality submits that the order passed by the learned Tribunal is wholly illegal and contrary to the provisions contained in the Fundamental Rules. He submits that even though the order of removal was set aside by the Tribunal, yet the option was given to the Municipality to initiate disciplinary proceedings and proceed in accordance with law, and consequently the Municipality was in fact issued charge sheet and now in the process of conducting further disciplinary enquiry. In such a situation the question of payment of full wages for the period of suspension does not arise. He seeks to rely on F.R.54 (A) and submits that the discretion is vested with the authority to grant such pay and allowances as are deemed to fit and the Tribunal ought not to have directed payment of full wages for the period of suspension.

4. On the other hand, the learned counsel for the 2nd

respondent submits that the petitioner was subjected to suspension for more than a decade and when once the order of removal is set aside, he is automatically entitled for full wages unless they are denied by the Tribunal. In the instant case, admittedly the order of removal was set aside and hence, the order of granting full wages is quite legal and valid.

5. We are afraid, we cannot accept the contention of the learned counsel for the 2nd respondent. Admittedly the order of removal was not set aside on merits, but it was set aside on account of violation of certain provisions of C.C.A. Rules. However, the Municipality was given power to initiate further disciplinary proceedings against the 2nd respondent. In view of this F.R.54 (A) will come into play and the pay and allowances have to be regulated in accordance with the said Fundamental Rule. There is no provision for automatic award of full wages for a period of suspension. Had the O.A. would have been allowed on merits of the case, the situation would have been. Different. But in the instant case, since the enquiry was conducted *ex parte*, the said order was set aside and the Municipality was directed to proceed with fresh enquiry. Under those circumstances, we are of the considered view that the order of Tribunal is not sustainable in law.

6. In the result, the Writ Petition is allowed and the order of the Tribunal is set aside. The respondents are directed to pass appropriate orders with regard to the payment of pay and allowance and treating the period of suspension in accordance with F.R.54 (A), after giving notice to the 2nd respondent and pass appropriate orders. This exercise shall be done within a period of three months from the date of receipt of copy of this order.

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ASSISTANT

REGISTRAR

18th June, 2004.

Kvr // true copy //

Section Officer

To

1 Mohd.Shafiuddin S/o. Abdul Mohd.Mohiuddin,
Slum Development Officer, Urban Community Development
M.C.H.Circle II, Sarder Mahel, Charminar, Hyderabad.

2 The Government of Andhra Pradesh, rep by its Secretary Municipal
Administration and Urban Development
(F1) Department Secretariat Buildings, Hyderabad.

3. Two C.Cs to the Government Pleader for Municipal Administration and Urban Development, AP High Court buildings, High Court of A.P.,
Hyderabad. (O.U.T.)

4. Two C.D.copies.